

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
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Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of Nobles
Cooperative Electric for a Service Territory
Violation by Missouri River Energy Services
and Worthington Public Utilities

ISSUE DATE: October 31, 2002

DOCKET NO. ET-10,E-0126,E-332/C-02-1501

ORDER REQUESTING COMMENTS,
PERMITTING LIMITED DISCOVERY AND
REQUIRING SIMULTANEOUS BRIEFING

PROCEDURAL HISTORY

On September 10, 2002, Nobles Cooperative Electric (NCE) filed a complaint against Missouri River Energy Services (MRES) and Worthington Public Utilities (WPU) alleging that WPU and its wholesale supplier MRES were providing retail electric power to wind turbine facilities located within NCE's exclusive assigned service territory. The complaint requested that the Commission direct WPU to cease providing this standby electric service to MRES and to direct MRES to cease taking the service from WPU.

On September 30, 2002, MRES and WPU filed a response to the complaint. MRES and WPU admitted providing "station service" to the wind turbine development through a dedicated transmission line feeding MRES power to the wind turbines, but denied that this constituted providing retail electric service. MRES and WPU requested that the Commission dismiss the complaint in its entirety.

On October 4, 2002, the Commission received comments from the Department of Commerce (DOC) recommending that the Commission dismiss the petition as incomplete. In the alternative the DOC made the following recommendations:

- define purchases for items such as lighting as retail purchases;
- grant NCE's complaint for the two WPPI turbines only;
- direct the utilities to resolve the issues on these plants and report to the Commission and DOC on any changes needed to service-area maps.

The DOC did not recommend either a contested case hearing or legal briefs.

On October 7, 2002, NCE submitted its comments. NCE requested that it be given access to certain contracts between MRES and others on issues related to the complaint. It suggested a further briefing schedule followed by a second Commission meeting. Further NCE stated it would like to avoid a contested case hearing.

The Commission met to hear this matter on October 10, 2002.

FINDINGS AND CONCLUSIONS

I. Background

A. The Complaint

NCE, in its complaint, stated that it is a rural electric cooperative with an assigned service territory in Nobles County. It identified WPU as a municipal electric utility with an assigned service territory located generally within the City of Worthington. It identified MRES as a wholesale supply entity which provides wholesale power to WPU.

It stated that MRES owns and operates, jointly with Wisconsin Public Power, four wind turbines in NCE's service territory and that MRES handles the electrical supply and metering for these turbines.

It alleged that pursuant to an agreement between MRES and WPU, MRES takes standby electric service from WPU for the wind turbines. NCE claimed that the standby electric service provided by WPU to MRES violates NCE's service territory. It argued that the standby service being provided was necessary, due to the intermittence of the wind resource, for security lighting, FAA lighting, computer equipment, yaw drive, lube oil heating, and other things.

Further, it argued that this service was retail electric service under Minnesota statutes¹ and cannot be provided by an electric utility within another utility's service territory without that utility's consent. NCE stated that it had not given its consent.

It asked the Commission, in this situation, to stop WPU from providing standby electric service to MRES and to stop MRES from taking such standby service from WPU.

B. Response by MRES and WPU

MRES and WPU did not dispute that the wind generation project was located within NCE's assigned service territory. They argued that NCE's premise that the "station service" provided was retail electric service was incorrect. Rather, they argued that the "station service" was not retail electric service and that MRES was simply providing the station service to itself.

MRES and WPU stated that MRES/Western Minnesota Municipal Power Agency² (Western Minnesota), WPU and Wisconsin Public Power Inc.³ (WPPI), were the developers of a project to construct six 900 kW wind turbines west of Worthington. To date, only four of the six turbines have been built. Two are owned by Western Minnesota and two are owned by WPPI. Western Minnesota has contracted to provide the entire output of its two wind turbines to MRES.

¹ Minn. Stat. § 216B.40.

² Western Minnesota is a municipal power agency organized under Minnesota Statutes Chapter 453 and is a corporation and political subdivision of the state of Minnesota.

³ WPPI is a municipal joint action agency formed pursuant to Wis. Stat. § 66.0825 and is a wholesale electric supplier to its 36 Wisconsin municipality members.

MRES and WPU indicated that the turbines are generally self-sufficient in terms of generating energy required for their internal energy needs. When there is no wind, however, the turbines' wholly-internal energy demands (FAA lighting, yaw drive, minimal security lighting, control panel heating and lube oil heating) must be met by off-site generation resources. MRES estimated that the needs of the four existing wind turbines for off site generation were approximately 20,000 kWh per year.

MRES and WPU stated that when the turbines cannot supply the energy needs for minimum lighting, heating and the like, these service needs are supplied through a dedicated transmission line feeding wholesale MRES power to the turbines. The service to the two turbines comes entirely from generation resources of MRES and is transmitted through the Alliant-West transmission system⁴ to a WPU substation. At the substation the service power and energy are delivered to the dedicated transmission line for the wind turbine project.

They argued that this dedicated transmission line is totally separate from all distribution circuits and lines that serve WPU retail loads. Although WPU constructed the line and owns the line, all of the costs are shared equally by MRES/Western Minnesota, WPPI and WPU.

Further, MRES argued that the turbines' dedicated transmission line does not duplicate NCE's distribution lines. NCE's lines run east to west and the nearest such line is one half mile away from the project. Since NCE would provide only station service, the dedicated transmission line would still be required for the output of the turbines. A connection to NCE would therefore require duplication of facilities already in place and would add a significant cost to the project.

MRES made the following additional arguments:

- There was no retail sale because no retail customers were involved. Rather, the power supplied to the project was "station service."
- WPU does not sell power to the project. Instead, MRES/Western Minnesota resources supply this power. MRES/Western Minnesota provides electric service to itself and there is no retail transaction when self-service prevails.
- No retail customers are served. The transaction is purely a wholesale service operation and the exclusive service area restrictions do not apply in such a situation.
- There is no standby service. They assert that standby service has been defined by the Commission as "... a backup source of power for those customers when their facilities are unable to operate either because of scheduled maintenance or because of unanticipated production power."⁵ Here the customer and generation owner/operator is MRES/Western Minnesota, which does not require a back-up source of power. MRES/Western Minnesota furnishes all of the power required when the lack of wind requires an outside source to provide station service.

⁴ Alliant-West (now known as Interstate Power and Light, but referred to herein as Alliant-West) is the control area operator in that area. MRES has a network transmission contract with Alliant-West for transmission service to and from Worthington.

⁵ *In the Matter of the Petition by Northern States Power*, Docket No. E-002/M-96-337, ORDER APPROVING PETITION AS MODIFIED, October 30, 1996.

- The Minnesota legislature has expressed a public policy favoring renewable energy options. Additional costs for service by NCE would be burdensome and discourage energy alternatives such as these wind turbines.

MRES requested that the complaint be dismissed in its entirety.

Comments of the DOC

The DOC argued that the application was incomplete because NCE did not file a map with the alleged violations clearly marked and should be dismissed. However, if the Commission does not choose to dismiss the complaint based upon completeness, the DOC made the following recommendations:

- the Commission should define purchases for items such as lighting as retail purchases;
- the Commission should grant NCE's complaint for the two WPPI turbines only;
- the Commission should direct the utilities to resolve the issues on these plants and report to the Commission and the DOC on any changes needed to service area maps.

The DOC did not recommend either a contested case or legal briefs. It argued that there was no dispute as to the key facts in the case and therefore no contested case was necessary. It further argued that legal briefs would be an inappropriate use of legal resources, would be repetitive and would not be likely to provide significant new input on this matter.

II. Commission Action

This complaint raises important and novel issues that may recur as wind generation grows. To ensure a fully informed decision, the Commission will solicit further comments from the parties and other interested persons on the distinction between station power and retail sales urged by respondents and on the procedural framework the Commission should use in this case. The Commission will also permit discovery between the parties on the facts of this case.

The Commission will delegate to the Executive Secretary the authority to set a discovery period, to set a briefing schedule for simultaneous initial and reply briefs, and to set and modify procedural time-lines as necessary.

ORDER

1. The Commission requests comments from the parties and other interested parties as to how to distinguish station power from retail sales, and whether such a distinction is necessary or desirable. Comments should also address the procedures the Commission should follow going forward.
2. Scheduling shall include a period for discovery, followed by simultaneous briefs and reply briefs. Discovery shall be limited to the facts involving the four wind turbines discussed in the complaint.

3. The Executive Secretary is authorized to modify or set dates for this proceeding as necessary.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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